

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.04.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE J.A.K. SAMPATHKUMAR

WRIT PETITION NO.6278 of 2006

Selvaraj

... Petitioner

vs.

1. The Secretary to Government
of Tamil Nadu
Education Department
Fort St. George
Chennai 600 009.

2. Director of School Education
College Road
Chennai 600 006.

3. The Director
Teacher Recruitment Board
4th Floor, EVK Sampath Maaligai
DPI Compound, College Road
Chennai 600 006.

4. The General Manager (PID)
Electronics Corporation of
Tamil Nadu Limited
MHU Complex, II Floor
692 Anna Salai, Nandanam
Chennai 600 035.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the Tender issued by the Fourth Respondent in Tender No.GM (PID)/CEP-V/HSS/01/2006 dated Nil-1.2006 and quash the same and directing the First, Second respondents to direct the Third Respondent to recruit the teachers of Various

Shcool in Tamilnadu for the Post of Junior Post Graduate Assistant Grade I in Computer Science through the Teacher recruitment Board.

For petitioner : Mr. R. Subramanian
for Mr. S. Kingston Jerold

For respondents : Mr. A.L. Somayaji
Addl. Advocate General
assisted by
Mr. V. Karthikeyan
Addl. Govt. Pleader for R.1 to R.3.

Mr. G.K.R. Pandian for R.4.

ORDER

(Order of the Court was made by P. SATHASIVAM, J.)

One Selvaraj, a Post Graduate in Computer Science, has filed this petition as Public Interest Litigation, seeking to quash the tender issued by the General Manager, Electronic Corporation of Tamil Nadu Limited (ELCOT), Chennai 600 035, 4th respondent herein in Tender No. GM (PID) CEP-V/HSS/01/2006 dated 30th January, 2006 and direct Government of Tamil Nadu, Director of School Education, respondents 1 and 2 herein to direct the third respondent, the Director of Teacher Recruitment Board, Chennai 600 006, to recruit the post of Junior Post Graduate Assistant Grade I in Computer Science in various School at Tamil Nadu through the Teacher Recruitment Board.

2. The case of the petitioner is briefly stated hereunder:

(a) According to the petitioner, he finished his B.Sc. [Computer Science] in Bharathidasan University, Tiruchirappalli in the year 1997. In 2001, he passed M.Sc. [Computer Science] in the same University in First Class. He also completed B.Ed. in Madras University and also M.Ed., degree in the same University in the year 2004 in First Class. Like him, thousands of students have completed their Bachelor and Master degrees in Computer Science and also in Bachelor of Education and Master of Education (B.Ed. and M.Ed.) courses. The computer course was introduced in the Schools through Education Department in the year 1985. Till date, Computer Science teachers were not recruited in Government Higher Secondary Schools. They were appointed on the basis of consolidated pay. From 2001, the Computer Science Department has been handed over to private contractors through Electronic Corporation of Tamil Nadu Limited, Chennai 600 035 (ELCOT).

(b) The Teachers in Higher Secondary Schools for all the subjects, viz., Junior Post Graduate Assistants/Junior Physical Education Directors Grade-I were recruited on the basis of direct recruitment. For that, Candidates should possess M.A./M.Sc./M.Com in the concerned subjects with B.Ed. degree. Candidates must have studied more subjects in Bachelor degree and Master degree both for academic subjects and languages for Junior Physical Education, Director Grade-I. For the Computer Science course, the post of Junior Post Graduate Assistants with consolidated pay of Rs.4,500/- per month are not recruited by the Government and for all other subjects, the post of Junior Post Graduate Assistants with consolidated pay of Rs.4,500/- per month are recruited through the Teacher Recruitment Board. This practice is in violation of the rights to employment of thousands of Computer Science graduates.

(c) This year, a tender is called for recruitment of teachers in Computer Science in 1,687 Government Higher Secondary Schools covering 30 Districts in Tamil Nadu on lease-cum-service basis through ELCOT in Tender No.GM (PID) CEP-V/HSS/01/2006 and the tenders should be submitted on or before 03.03.2006 to the 4th respondent and the tenders would be opened at 3.15 p.m. on the same day. Challenging the same, the writ petition has been filed.

3. On behalf of respondents 1 and 2, Deputy Secretary to Government, School Education Department, Secretariat, Chennai 6900 009, has filed a counter affidavit disputing various averments made in the affidavit filed in support of the above petition. It is stated that the writ petition is not maintainable since the petitioner has no locus standi to question the mode of recruitment of teachers by the respondents. The 4th respondent Corporation is fully owned by the State of Tamil Nadu and it is an Undertaking of the State with rich experience in the field of computers and hence, the State has entrusted the process of calling for tenders and recruitment of Instructors in various Government Schools through the successful contractors.

4. The subject of Computer Education was introduced in Government Schools during the academic year 1985. Since the said field was new at that time, sufficient teachers were not available to teach the said subject. Further, Computer Science was not introduced in all the Schools during 1985, but it was introduced all over the State in a phased manner. Computer education is growing at a fast pace day by day. A teacher with update knowledge in computer education is required to educate young students to develop them in computer education. To purchase, maintain and upgrade the computers continuously in Government Schools, it will be difficult for the State. Moreover, if any teacher is permanently appointed in the Government Schools, the teacher will not be in a position to acquire update knowledge in the fast growing field of computer science. Hence, the State has

decided to appoint Instructors through contractors in the filed of computer education, since these contractors may be in a position to appoint Instructors with qualifications at the relevant point of time.

5. By virtue of appointment on contract basis, the contractors are expected to provide latest technology in computer to educate students in the Government Higher Secondary Schools. Further, the maintenance as well as upgradation of the same will be done by the contractors themselves and in turn, the State will provide a quality education in computer science to the children at the lowest cost. The system of appointment of computer instructors was done by the State successfully from 1999 onwards. Whoever is highly qualified in the said filed is appointed by the contractors to the Schools. The present system is successfully implemented by the State and welcomed by the student community as well as the public. Further, the issue raised in the writ petition has already been decided by a Division Bench of this Court in its judgment dated 28.10.2005 in W.P.Nos.23098 of 2004 etc., batch. It is well established that the recruitment of computer science instructors is purely a matter of Government policy. In such circumstances, interference by this Court is very limited.

6. The 4th respondent has also filed a counter affidavit reiterating the stand taken by the respondents 1 and 2. In addition to the same, it is stated that the said Scheme is being operated on lease-cum-service contract basis for a period of five years. The payments to the contractors are made on quarterly basis on the completion of every quarter. ELCOT officials inspect each school in each quarter and the performance of the contractors in terms of teaching and maintenance of equipment, etc., is assessed. External experts from reputed institutions are also engaged for random inspection of the contractors for corrective action and improvement. A regular review meeting of all contractors is being conducted by the Secretaries of School Education Department, Information Technology Department, Managing Director, ELCOT and Director of School Education.

7. We heard Mr. R. Subramanian, learned counsel for the petitioner and Mr. A.L. Somayaji, learned Additional Advocate General for the respondents.

8. Mr. R.Subramanian, learned counsel appearing for the petitioner, by drawing our attention to the qualifications prescribed for Teachers teaching Plus One and Plus Two in respect of all subjects other than Computer Science and the qualifications prescribed in the Tender notice for Teachers imparting computer education, contended that the Government policy prescribing different qualifications among the teachers teaching other subjects and the teachers teaching computer science is in violation of

Article 14 of the Constitution of India. He also contended that the right to employment opportunity is affected by contract method is being adopted.

9. On the other hand, Mr. A.L. Somayaji, learned Additional Advocate General highlighted that in order to provide computer education in all Government Higher Secondary Schools and in view of the fact that qualified persons are to be utilised in the filed of computer, the Government resorted to entrust the work to contractors and appointed ELCOT as its nodal agency. Further, according to him, as it is a policy decision taken by the Government, judicial review is very limited. He also contended that the question raised in this writ petition has already been considered by a Division Bench of this Court in W.P.No.23098 of 2005 etc., batch dated 28.10.2005 and in view of the same, the present writ petition is liable to be dismissed.

10. Coming to the first contention, for direct recruitment to Junior Post Graduate Assistants / Junior Physical Education Directors, the candidates should possess M.A./M.Sc./M.Com. with B.Ed. Further condition is that the candidates must have studied the same subject both in Bachelor Degree and Master Degree in academic subjects and languages. Likewise, for Junior Physical Education Director Grade-I, candidates should possess any Bachelor Degree with M.Ed. Degree. On the other hand, the Tender notice issued by the ELCOT enables the successful contractor to appoint minimum two instructors with the following prescribed qualifications.

"6.

The Instructors shall be at least Graduates with Computer Science/Computer Application/Computer Engineering/Information Technology as major subjects.

OR

Graduates with additional qualification in the filed of Computer Science / Computer application / Computer Engineering/Information Technology in the form of one year Diploma from a recognised University / "A" Level of DOEACC Examination, Accredited course.

OR

Graduates with certificate course in the field of Computer Science/Computer Application/Computer Engineering/Information Technology from a computer training institution with a minimum of two-year teaching experience of Computer Science in Govt. Higher Secondary Schools. "

11. A perusal of qualifications for Teachers in Higher Secondary Schools in respect of all subjects except Computer Science show that the aspirants should possess M.A./M.Sc./M.Com. in

the concerned subjects with B.Ed. and they must have studied the same subjects both in Bachelor degree and Master Degree in academic subjects as well as languages. Though such condition is not applicable to the Instructors to be selected by the contractors for teaching Computer Science, as per the Tender condition, the Instructor shall be a Graduate in Computer Science or Computer Application or Computer Engineering or Information Technology. Likewise, graduates with additional qualification in the field of Computer Science/Computer Application/Computer Engineering/Information Technology in the form of one year Diploma course from recognised University are also eligible. The learned counsel for the petitioner submitted that graduates with Certificate Course in the field of Computer Science and Computer Application are also eligible to be appointed as Instructors and in that event, the students may not get more knowledge about Computer Science.

12. We are unable to accept the said contention. Even Clause 6 of the Tender conditions prescribes that graduates with Certificate Course in the field of Computer Science/ Computer Application/ Computer Engineering/ Information Technology from a computer training Institution with a minimum of two year teaching experience in Government Higher Secondary Schools alone are eligible. In view of the fact that two year teaching experience in Computer Science in a Government Higher Secondary School is a must for graduates with Certificate Course in the Computer Science and Computer Applications, etc., we are unable to accept the contention of the petitioner.

13. Coming to the other contention, learned Additional Advocate General heavily relied on the following decisions to show that in the matter of policy decision and eligibility criteria prescribed in the Tender, judicial review is very limited.

- (i) 2004 (4) SCC 19 (Directorate of Education vs. EDUCOMP Datamatics Ltd.); and
- (ii) 2003 (3) SCC 541 (P.M.Latha vs. State of Kerala).

In the first case, i.e., in 2004 (4) SCC 19 (cited supra), the following conclusion is pressed into service:

"13. As a matter of policy the Government took a conscious decision to deal with one firm having financial capacity to take up such a big project instead of dealing with multiple small companies which is a relevant consideration while awarding such a big project. Moreover, it was for the authority to set the terms of the tender. The courts would not interfere with the

terms of tender notice unless it was shown to be either arbitrary or discriminatory or actuated by malice. While exercising the power of judicial review of the terms of the tender notice the court cannot say that the terms of the earlier tender notice would serve the purpose sought to be achieved better than the terms of tender notice under consideration and order change in them, unless it is of the opinion that the terms were either arbitrary or discriminatory or actuated by malice. "

In 2003 (3) SCC 541 (cited supra), while considering the question whether for a particular post, the source of recruitment should be the candidates with TTC qualification or B.Ed. qualification, their Lordships have concluded that it is a matter of recruitment policy and after holding so, concluded that,

"We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not B.Ed. Whether B.Ed qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed candidates, for the present vacancies advertised, as eligible."

It is clear from the above decision that prescribing qualifications for particular subject is a recruitment policy of the Government and in the absence of any material to show that the action is arbitrary or discriminatory or actuated by malice, the same cannot be interfered by the Courts.

14. As rightly pointed out by the learned Additional Advocate General, the Government of Tamil Nadu has enunciated a policy to impart Computer Literacy to rural and downtrodden people and this project has been introduced to Plus One and Plus Two students in Government Higher Secondary Schools all over the State. It is also brought to our notice that the Government has appointed ELCOT as the nodal agency for implementing this project.

15. Regarding the quality of the teachers to be appointed by the contractors and quality of their teaching, ELCOT in their counter affidavit has specifically stated that payments to the contractors are made on quarterly basis based on their performance in the completed quarter and ELCOT officials inspect every school in each quarter and the performance of the contractors in terms of teaching, maintenance of equipment etc. is assessed. It is also stated that external experts from reputed institutions are also engaged for random inspection and depending on their report, corrective action and improvement are made by the contractors. It is also stated that the regular review meeting of all contractors is conducted by the Secretaries of School Education Department,

Information Technology Department, Managing Director, ELCOT and Director of School Education. It is further stated that in the surprise inspection by the ELCOT, levy of penalty for the erring contractors will be imposed on the basis of the information regarding checks and control over the Instructors. We are therefore of the view that the apprehension raised by the petitioner is liable to be rejected.

16. Learned Additional Advocate General has also relied on the decision of a Division Bench of this Court dated 28.10.2005 made in W.P.No.23098 of 2005 etc., batch. (Tenkasi Kalvi Mavatta Arasu Melnilaipalli Kanini Asiriyargal Sangam and others vs. ELCOT and others). In all the cases, prayer of the writ petitioners is to declare that the action of the Government of Tamil Nadu and the ELCOT to teach Computer Science in the Government Higher Secondary Schools on contract basis is unconstitutional and arbitrary and consequently to direct the respondents 1 and 2 therein to absorb the teachers, who are the members of the Association as regular teachers in the Government Higher Secondary Schools. After considering the issue in depth, the Division Bench, rejected the contentions which are similar to ones raised before us and concluded that the arbitrariness of the policy decision taken by the Government can be gauged by the fact that similar schemes had been recognised by many States such as Andhra Pradesh, Maharashtra, Goa, Delhi, etc. On the side of the Government, it was contended before the Division Bench that keeping in view the nature of the subject with its ever increasing developments, in order to keep pace, it is more appropriate to delegate such matters to the reputed Institutions and the Government is trying to ensure only proper quality. In para-27 of the judgment, the Division Bench has concluded that,

"This is again a matter of policy and it cannot be laid down as a matter of law that in every case a better quality is ensured under permanent employment in the Government."

17. The following conclusion in the penultimate paragraph is also relevant:

"28. However, in the present case, the respondents, apart from considering the question of financial resources, have also considered the question of viability of directly undertaking such work and the Government has taken the policy decision that it would be more appropriate to take recourse to the present scheme. Even though the scheme cannot be said to be flawless and obviously there may be scope for improvement on many aspects, ultimately, it is a matter to be decided by the Government and the Courts cannot substitute their own

opinion. Since the decision has been taken by considering the relevant circumstances, we are not in a position to uphold the contention of the petitioner that the policy is arbitrary. "

18. We have already discussed the view expressed by the Hon'ble Supreme Court and in view of the stand taken by the respondents and after noting the qualifications and other conditions mentioned in the Tender notice in respect of Computer Teachers to be appointed by the Contractors, we are in respectful agreement with the view expressed by the Division Bench of this Court and reject the argument of the learned counsel for the petitioner.

19. As pointed out in the Supreme Court decisions, it is a matter of policy to go for contract, particularly in the field of education and we are of the view that in such matters the authority calling for Tender is the best Judge and the same cannot be lightly interfered with by way of judicial review. Further, as rightly pointed out by the Government in its counter affidavit, to purchase, maintain and upgrade the computers continuously in Government Schools, it will be difficult for the State.

Under these circumstances, we do not find any merit in the writ petition; consequently, the same is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Kh

To

1. The Secretary to Government
of Tamil Nadu
Education Department
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Chennai 600 035.

1 cc to Mr.G.K.R. Pandian, Advocate, Sr. 21064

Writ Petition No.6278/2006

MAB (CO)
kk 26/4



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